

16A C.J.S. Constitutional Law § 790

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Constitutional Law

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PART III. Overview of Protected Personal Rights and Freedoms; Police Power

IX. Personal, Civil, and Political Rights and Freedoms

C. Personal Liberty

3. Right to Travel

a. In General

§ 790. Standard of review

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law  1280, 1281

An infringement on the right to travel may be subject to strict scrutiny under the compelling state interest test if the degree of impact on the right to travel is sufficient.

The validity of governmental restrictions on the constitutional right to travel is generally determined by weighing the nature and extent of the infringement against the State's purpose in enacting the statute¹ and the fairness and substantiality of the relationship between the purpose and the restriction.² Because the right to travel is generally considered to be a fundamental one,³ government infringement of the right to travel is subject to strict scrutiny⁴ where its impact rises to the level of either deterring migration or penalizing the exercise of the right to travel.⁵ Governmental actions that infringe the right to travel are prima facie invalid⁶ and are to be countenanced only when they are necessary to serve a compelling governmental interest.⁷

The burden on the government to show a compelling interest sufficient to interfere with a person's right to interstate travel is a heavy one⁸ as the government must show that the measure is necessary to achieve, and the least intrusive means of achieving, the compelling state interest.⁹ The means chosen to protect a compelling interest must be closely tailored to the achievement of the goals claimed.¹⁰ If the challenged law imposes a penalty on persons because they exercise their right to travel but there are available other reasonable means which will achieve the State's compelling purpose and impose a lesser burden on constitutionally protected activity, the State must choose the less restrictive method.¹¹

Minor restrictions on travel¹² and state regulations which affect the right to travel only indirectly¹³ need not satisfy the compelling state interest test in order to survive. A rational basis test of judicial scrutiny is applicable where the right to travel has not been penalized or impaired¹⁴ or where the challenged rule does not establish a classification based on residency or erect a barrier to migration.¹⁵ For instance, because the right to drive is not a fundamental constitutional right,¹⁶ a statute restricting this right need only be rationally related to a legitimate state purpose.¹⁷ Likewise, a travel restriction that is rationally related to a criminal offense requires only a rational basis to survive constitutional scrutiny.¹⁸

A third level, one of intermediate scrutiny, has also been applied to restrictions on intrastate travel, such as anticruising ordinances,¹⁹ that impose nontrivial burdens on travel.²⁰ Under this level of scrutiny, a restriction on the right to travel must be narrowly tailored to meet significant governmental objectives²¹ while leaving open ample channels for exercising the right.²²

CUMULATIVE SUPPLEMENT

Cases:

All images are not inherently expressive for purposes of pure speech; context matters. U.S.C.A. Const.Amend. 1. *Cressman v. Thompson*, 798 F.3d 938 (10th Cir. 2015).

[END OF SUPPLEMENT]

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Footnotes

- 1 U.S.—*U.S. v. Hare*, 308 F. Supp. 2d 955 (D. Neb. 2004).
- 2 Alaska—*Stanek v. Kenai Peninsula Borough*, 81 P.3d 268 (Alaska 2003).
- 3 Alaska—*Stanek v. Kenai Peninsula Borough*, 81 P.3d 268 (Alaska 2003).
- 4 § 789.
- 5 U.S.—*Maldonado v. Houstoun*, 157 F.3d 179 (3d Cir. 1998); *U.S. v. Bredimus*, 352 F.3d 200 (5th Cir. 2003); *Matsuo v. U.S.*, 586 F.3d 1180 (9th Cir. 2009); *Peruta v. County of San Diego*, 678 F. Supp. 2d 1046 (S.D. Cal. 2010).
- 6 Mass.—*Com. v. Weston W.*, 455 Mass. 24, 913 N.E.2d 832 (2009).
- 7 Mich.—*Musto v. Redford Tp.*, 137 Mich. App. 30, 357 N.W.2d 791 (1984).
- 8 Miss.—*Mississippi High School Activities Ass'n, Inc. v. Coleman By and on Behalf of Laymon*, 631 So. 2d 768, 89 Ed. Law Rep. 692 (Miss. 1994).

N.J.—In re Contest of November 8, 2011 General Election of Office of New Jersey General Assembly, 210 N.J. 29, 40 A.3d 684 (2012).

Tenn.—State v. March, 395 S.W.3d 738 (Tenn. Crim. App. 2011).

Wash.—State v. Enquist, 163 Wash. App. 41, 256 P.3d 1277 (Div. 2 2011).

Particular application of equal protection analysis

Minn.—Schatz v. Interfaith Care Center, 811 N.W.2d 643 (Minn. 2012).

U.S.—Memorial Hospital v. Maricopa County, 415 U.S. 250, 94 S. Ct. 1076, 39 L. Ed. 2d 306 (1974); In re U. S. ex rel. Missouri State High School Activities Ass'n, 682 F.2d 147, 5 Ed. Law Rep. 383 (8th Cir. 1982).

Alaska—State v. Wylie, 516 P.2d 142 (Alaska 1973).

Conn.—Leech v. Veterans' Bonus Division Appeals Bd., 179 Conn. 311, 426 A.2d 289 (1979).

Mich.—Castner v. Clerk of City of Grosse Pointe Park, 86 Mich. App. 482, 272 N.W.2d 693 (1978).

What constitutes "penalty"

Even a temporary deprivation of an important right or benefit may be a penalty while a permanent deprivation of a less important right is also a penalty.

Miss.—Mississippi High School Activities Ass'n, Inc. v. Coleman By and on Behalf of Laymon, 631 So. 2d 768, 89 Ed. Law Rep. 692 (Miss. 1994).

Alaska—State v. Adams, 522 P.2d 1125 (Alaska 1974).

U.S.—Saenz v. Roe, 526 U.S. 489, 119 S. Ct. 1518, 143 L. Ed. 2d 689 (1999); Minnesota Senior Federation, Metropolitan Region v. U.S., 273 F.3d 805 (8th Cir. 2001); Rosenbrahn v. Dugaard, 2014 WL 6386903 (D.S.D. 2014).

Conn.—Carofano v. City of Bridgeport, 196 Conn. 623, 495 A.2d 1011 (1985).

Del.—Alex S. A. v. Julia A., 419 A.2d 965 (Del. Fam. Ct. 1980).

Idaho—In re Bermudes, 141 Idaho 157, 106 P.3d 1123 (2005).

Ind.—Clark v. Atkins, 489 N.E.2d 90 (Ind. Ct. App. 1986).

Mass.—Com. v. Weston W., 455 Mass. 24, 913 N.E.2d 832 (2009).

Mich.—People v. Lewis, 107 Mich. App. 277, 309 N.W.2d 234 (1981).

Mont.—Matter of Custody of D.M.G., 1998 MT 1, 287 Mont. 120, 951 P.2d 1377 (1998).

Tenn.—State v. March, 395 S.W.3d 738 (Tenn. Crim. App. 2011).

Mont.—Matter of Custody of D.M.G., 1998 MT 1, 287 Mont. 120, 951 P.2d 1377 (1998).

Wash.—Duranceau v. City of Tacoma, 27 Wash. App. 777, 620 P.2d 533 (1980).

U.S.—Grace v. City of Detroit, 760 F. Supp. 646 (E.D. Mich. 1991).

Miss.—Mississippi High School Activities Ass'n, Inc. v. Coleman By and on Behalf of Laymon, 631 So. 2d 768, 89 Ed. Law Rep. 692 (Miss. 1994).

U.S.—Cramer v. Skinner, 931 F.2d 1020 (5th Cir. 1991).

Mooring privileges

U.S.—Hawaiian Navigable Waters Preservation Soc. v. State of Hawaii, 823 F. Supp. 766 (D. Haw. 1993), aff'd, 42 F.3d 1185 (9th Cir. 1994).

Wis.—Kuhn v. Musolf, 143 Wis. 2d 134, 420 N.W.2d 401 (Ct. App. 1988).

U.S.—Martinez v. Bynum, 461 U.S. 321, 103 S. Ct. 1838, 75 L. Ed. 2d 879, 10 Ed. Law Rep. 11 (1983); Connelly v. Steel Valley School Dist., 706 F.3d 209, 289 Ed. Law Rep. 484 (3d Cir. 2013); Arredondo v. Brockett, 482 F. Supp. 212 (S.D. Tex. 1979), decision aff'd, 648 F.2d 425 (5th Cir. 1981), judgment aff'd, 461 U.S. 321, 103 S. Ct. 1838, 75 L. Ed. 2d 879, 10 Ed. Law Rep. 11 (1983).

Ill.—Ball v. Village of Streamwood, 281 Ill. App. 3d 679, 216 Ill. Dec. 251, 665 N.E.2d 311 (1st Dist. 1996).

Mass.—Com. v. Weston W., 455 Mass. 24, 913 N.E.2d 832 (2009).

N.Y.—Cacace v. Seniuk, 104 Misc. 2d 560, 428 N.Y.S.2d 819 (Sup 1980).

U.S.—Schumacher v. Nix, 965 F.2d 1262 (3d Cir. 1992).

§ 796.

Ariz.—Knapp v. Miller, 165 Ariz. 527, 799 P.2d 868 (Ct. App. Div. 1 1990).

- 18 Ill.—People v. Laughlin, 293 Ill. App. 3d 194, 227 Ill. Dec. 680, 687 N.E.2d 1162 (2d Dist.
1997).
- 19 Minn.—State v. Stallman, 519 N.W.2d 903 (Minn. Ct. App. 1994).
Wis.—Brandmiller v. Arreola, 199 Wis. 2d 528, 544 N.W.2d 894 (1996).
- 20 Wis.—Brandmiller v. Arreola, 199 Wis. 2d 528, 544 N.W.2d 894 (1996).
- 21 Minn.—State v. Stallman, 519 N.W.2d 903 (Minn. Ct. App. 1994).
Overly broad order
Order of divorce court restraining husband from going to city in which wife and children were
residing was overly broad and infringed on husband's constitutional right to travel.
- 22 Mont.—In re Marriage of Kovash, 260 Mont. 44, 858 P.2d 351 (1993).
Wis.—Brandmiller v. Arreola, 199 Wis. 2d 528, 544 N.W.2d 894 (1996).

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